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Note verbale dated 1 November 2004 from the Permanent Mission of India to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of India to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) and, in that context, has the honour to submit herewith its national report, in accordance with paragraph 4 of Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 1 November 2004 from the Permanent Mission of India to the United Nations addressed to the Chairman of the Committee

India's national report on the implementation of Security Council resolution 1540 (2004)

1. Proliferation of weapons of mass destruction is a major challenge facing the international community today. As a victim of terrorism for almost two decades, India fully understands the dangers that the transfers of such weapons of mass destruction to non-State actors could entail. In his address to the nation on June 24, 2004, Prime Minister Dr. Manmohan Singh stated India's commitment to continue to work to prevent proliferation of weapons of mass destruction. In his address to the 59th United Nations General Assembly on 23 September 2004, Prime Minister Dr. Manmohan Singh highlighted the global threat that proliferation of weapons of mass destruction and their means of delivery poses to international peace and security and India's impeccable record in this respect. While reiterating India's firm and resolute opposition to proliferation, Prime Minister Dr. Manmohan Singh said that it is only a global consensus of willing nations that would ultimately prove to be truly effective in the global combat against proliferation.

2. Fully conscious of the responsibilities that come with the possession of advanced technologies, India is committed to maintaining effective laws to prevent the transfer of weapons of mass destruction for terrorist purposes and to maintain effective domestic controls to prevent WMD proliferation. Preventing access to weapons of mass destruction and their means of delivery to non-State actors is a matter of national policy for the Government of India. India will not be a source of proliferation of sensitive technologies. India does not support, assist or encourage any State to develop weapons of mass destruction and their means of delivery. The Government of India's stated policy includes a continuance of strict controls on export of nuclear and missile related materials and technologies.

I. Domestic controls to prevent proliferation

3. India has a substantive corpus of domestic laws, regulations and administrative measures to prevent the proliferation of weapons of mass destruction, their means of delivery, and related materials. As a State with strong and unwavering tradition of democracy and the rule of law as well as a strong and unyielding sense of

responsibility, India has over the years enacted effective laws and regulations and has institutionalized an array of administrative mechanisms to prohibit WMD access to non-State actors and terrorists. These include The Unlawful Activities (Prevention) Amendment Ordinance, 2004, The Atomic Energy Act, 1962 and the orders issued thereunder; The Environment Protection Act, 1986; The Chemical Weapons Convention Act, 2000; The Customs Act, 1962; The Foreign Trade (Development & Regulations) Act, 1992; The Explosives Substances Act, 1908; The Arms Act, 1959 and The Arms Rules, 1962. Detailed regulations and procedures are notified by the Government of India under the above Acts. The Government of India has also specified a List of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), the export of which is either prohibited or permitted only under license. This List is notified by the Director General of Foreign Trade (DGFT) at Schedule 2 Appendix 3 of the Indian Tariff Classification (Harmonized System) {ITC(HS)} of Export and Import Items, 2004-2009.

II. Preventing WMD Proliferation and its links with terrorism

4. The Government of India has recently promulgated an Ordinance to amend the Unlawful Activities (Prevention) Act, 1967. The Unlawful Activities (Prevention) Amendment Ordinance, 2004 promulgated on 21 September 2004 *inter alia* covers terrorism and its links with weapons of mass destruction. Sections 10 and 23 (1) and (2) provide for enhanced penalties for "unauthorized possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemicals substance of warfare". Sections 23 (1) and (2) provide for punishment with imprisonment for a term not less than five years but which may extend to life imprisonment for unauthorized possession with the intent to aid any terrorist. Section 15 defines a terrorist act as *inter alia* involving the use of "bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature". This definition covers terrorism aimed against India as well as other countries. Section 16 provides for a minimum punishment of five years, which may extend to life imprisonment, for committing terrorist acts, including involving weapons of mass destruction. Death penalty may also be imposed where such act has resulted in the death of a person. Sections 17, 18, and 19 criminalize and provide for minimum punishment for funding such acts; conspiring to commit, or aiding and abetting such activities or any act preparatory to the commission of a terrorist act; and harbouring and concealing,

including the attempt to do so, persons engaged in such activities. Financing of terrorism and the activities and channels relating to informal movement of funds and money laundering are also regulated under the Foreign Exchange Management Act (FEMA), 1999 and the Prevention of Money Laundering Act (PMLA), 2002.

III. Chemical Weapons Convention

5. India is a State Party to the Chemical Weapons Convention (CWC), the only multilaterally-negotiated, non-discriminatory disarmament agreement of a universal character. As an advocate of a non-discriminatory universal ban on the development, production, stockpiling and use of chemical weapons backed by a stringent verification system, India had played an active role in ensuring that the CWC was a genuine multilaterally negotiated Convention. India, therefore, has a special interest in the success of the Convention and its full and effective implementation. India is the only declared CW possessor State which has met all the destruction timelines of the Convention. By voluntarily declaring stockpiles and facilities, by strictly adhering to the Convention timelines and by its record of verified compliance, India has sought to provide an example for other countries to emulate. India is committed to eliminate this entire class of weapons of mass destruction.

III.A. Preventing Chemical Weapons proliferation: Legislative basis

6. The Government of India has enacted the Chemical Weapons Convention Act, 2000 to give effect to the CWC and to provide for matters connected therewith or incidental thereto. Section 13 of the CWC Act, 2000 prohibits development, production, stockpiling, retention, and use of any chemical weapon by unauthorized persons. It also prohibits unlawful acquisition and direct or indirect transfers of chemical weapons. Section 40 criminalizes and provides for punishment with imprisonment for a term not less than one year but which may extend to life imprisonment and financial liability, in case of contravention of any provision of the Act. Section 22 provides the authority to issue warrants for the arrest of any person if there is reason to believe that he may have committed any offense punishable under the Act or for search by enforcement officials. There are also provisions for search, seizure and arrest without warrant (Section 23).

7. The CWC Act, 2000 prohibits export from, or import into, India of toxic chemicals or precursors listed in the Schedules 1 to 3 in the Annex on Chemicals to the Chemical Weapons Convention except in accordance with the provisions of the Foreign Trade Policy determined by the Government from time to time under the Foreign Trade (Development and Regulation) Act, 1992 and the orders issued thereunder (Section 17). Violation of this provision is punishable with imprisonment for a term not less than one year but which may extend to life imprisonment and financial liability (Section 43). Sections 41 and 42 provide for similar punishment for contraventions in relation to CWC Schedule 1 chemicals and transfers of CWC Schedule 2 chemicals.

8. Controls exercised by India over export of dual-use chemicals are stricter than the provisions of the Convention in some areas. Export of Schedule 1 chemicals are prohibited, with no exceptions. Export of Schedule 3 chemicals to other States Parties to the CWC, which are freely permissible under the Convention, are also controlled and are subject to submission of requisite documents by the exporter, including end-use cum end-user certification.

III.B. Preventing Chemical Weapons proliferation: Institutional framework

9. India also set up a National Authority in 1997 for implementing the provisions of the Chemical Weapons Convention. The CWC National Authority of India, in coordination with other relevant agencies/departments of the Government, is responsible for the submission to the OPCW of annual declarations in respect of the chemical industry and the inspections of facilities located in India. These continue to be conducted to the mutual satisfaction of the OPCW and India. The National Authority and the Department of Chemicals and Petrochemicals are also responsible for raising awareness about the Chemical Weapons Convention and the national implementation measures among the chemical units in the country, including prohibitions and obligations. Seminars for the industry are routinely conducted to generate awareness about the provisions of the Convention.

IV. Biological and Toxin Weapons Convention

10. India is a State Party to the 1972 Biological and Toxin Weapons Convention (BTWC). India ratified the Convention in 1974. India maintains that the norms against biological weapons enshrined in the BTWC must be upheld, particularly at a time of

heightened threat of BW proliferation and bio-terrorism, and meaningful multilateral efforts should be pursued to strengthen these norms. India is in favour of inclusion of provisions of an adequate and effective mechanism in the BTWC, while at the same time providing for increased international cooperation in transfers and exchanges of biological materials and technologies for peaceful purposes. India has been playing a constructive role in international efforts aimed at enhancing the effectiveness of the BTWC and is committed to the ongoing process of annual meetings of experts and States Parties to the BTWC. Domestically, relevant agencies of the Government regularly interact with the industry to increase awareness about our obligations under the Convention.

IV.A. Preventing Biological Weapons proliferation: Legislative basis

11. India has in place a regulatory mechanism for the maintenance of security and oversight of pathogens, micro-organisms, genetically modified organisms and toxins in production, import, export, use and research. The Environment (Protection) Act, 1986 provides the mandate to the Government to lay down procedures and safeguards as it deems necessary for the handling of hazardous substances. 'Hazardous substance' has been defined as any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment while 'handling' denotes the "manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like" of such substances (Sections 2 and 3). The Act prohibits handling of such substances except in accordance and compliance with the prescribed procedural safeguards (Section 8). The Act has provisions for entry, inspection and sample analyses by enforcement officials (Sections 10 and 11) and offenses by companies and Government Departments (Sections 16 and 17). Contravention of the provisions of the Act, or the rules, orders, directions issued thereunder are punishable with imprisonment for a term which may extend to five years or with fine or with both (Section 15(1)).

12. Deriving the necessary mandate from the Environment (Protection) Act, 1986 (Sections 6, 8 and 25), the Government of India in 1989 notified the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms and Genetically Engineered Organisms or Cells. These Rules also apply to new gene-technologies. These Rules *inter alia* are applicable for the sale, offer for sale, storage for the purpose of sale, any kind of handling of hazardous micro-organisms and the

export and import of genetically engineered cells organisms. The Rules also provide the Government with the authority to regulate micro-organisms which "have not been presently known to exist in the country or have not been discovered so far" (Section 3 (v)). The Rules prohibit unauthorized deliberate release of genetically engineered organisms/hazardous micro-organisms or cells into the environment or nature (Section 9).

IV.B. Preventing Biological Weapons proliferation: Country-wide biosafety network

13. The use of recombinant technologies are well regulated under the Environment Protection Act, 1986, the 1989 Rules and the Recombinant DNA Safety Guidelines issued by the Government in 1990. Any institution, including research institutions, handling micro-organisms/genetically engineered organisms is required by law to have an Institute Bio-Safety Committee to examine and monitor projects from the point of view of safety and biohazard potential. More than 300 Institutional Bio-safety Committees have been set up all over the country. These Committees, which include a Government representative as a member, also assist in training of personnel on biosafety, safe disposal of hazardous wastes, and the adoption of an emergency plan.

14. Institutionalized advisory and regulatory bodies such as the Review Committee on Genetic Manipulation (RCGM), Genetic Engineering Approval Committee (GEAC), and Recombinant DNA Advisory Committee (RDAC) have been set up, with the scope of their mandate and functions being statutorily defined. Bodies such as the Review Committee on Genetic Manipulation (RCGM) provide for consultations between the relevant agencies of the Government and other relevant autonomous/semi-autonomous bodies for monitoring the safety-related aspects of on-going research projects and activities involving hazardous micro-organisms, including drawing up of regulatory guidelines and procedures restricting or prohibiting production, sale, importation and use of genetically engineered organisms or cells. All ongoing projects involving high risk category and controlled field experiments are reviewed by the RCGM, which is coordinated by the Department of Bio-technology, to ensure that adequate precautions and containment conditions are followed. Use of pathogenic micro-organism or any genetically engineered organisms or cells for the purpose of research is permitted only in laboratories authorized for the purpose.

IV.C. Bio-safety: A list-based approach

15. The 1989 Rules under the Environment Protection Act, 1986 and the 1990 Guidelines list micro-organisms on the basis of differential risk assessment. These lists, which are applicable from the biosafety point of view, are more elaborate than the list of micro-organisms and toxins included in Category 2 of the SCOMET List (reference paras below) notified by the Government for the purpose of dual-use export controls.

V.A. Preventing nuclear proliferation: Legislative basis

16. The Atomic Energy Act, 1962, and the rules, orders and notifications issued there under provide the legal framework for the development, control and use of atomic energy in India and use of atomic energy for the welfare of the people of India and for regulating various activities connected therewith. Government exercises strict control over all activities related to atomic energy. The Act prohibits except under a license the acquisition, production, possession, use, disposal, export, or import of prescribed substances, prescribed equipment, specified minerals or other substances from which prescribed substances can be obtained, and plants designed or adapted or manufactured for the production, development and use of atomic energy or for research into matters connected therewith (Section 14). 'Prescribed substances' are substances notified by the Government which in its opinion are or may be used for the production or use of atomic energy or research into matters connected therewith. 'Prescribed equipment' is property notified by the Government which in its opinion is specially designed or adapted or which is used or intended to be used for the production of utilization of any prescribed substance, or for the production or utilization of atomic energy, radioactive substances, or radiation. (Section 2). The Act also prohibits the manufacture, possession, use, transfer, export, import, transport and disposal of any radioactive substance without Government's written permission (Section 16). Contravention of these provisions of the Act are punishable with imprisonment for a term which may extend up to a period of five years or with fine or both (Section 24).

V.B. Preventing nuclear proliferation: Safety and Security

17. Comprehensive and detailed procedures are in place for physical protection, control and accounting of nuclear materials to prevent any unlawful access or unauthorized leakage. The Nuclear Material Accounting (NUMAC) Cell of the

Department of Atomic Energy is responsible for the State System of Accounting and Control (SSAC) of nuclear materials. Periodic inspections and audit of different installations are routinely carried out to ensure maintenance of accurate records of nuclear materials in production, use, storage or transport. Comprehensive measures are in place for physical protection and security of nuclear installations. These include multi-layered access control, intrusion detection and alarm devices with system for surveillance and monitoring, and well-trained security personnel. The corpus of physical protection and security measures incorporates rigorous design practices, periodic regulatory inspection, licensing, regular technical audit and related up-gradation.

18. India is committed to its safeguards agreements (Infcirc-66 rev.2) concluded with the International Atomic Energy Agency (IAEA). India has actively supported the Agency's programmes related to nuclear security. India has conducted a training course under the IAEA aegis on physical protection of nuclear installations and is willing to offer its expertise to regularly conduct similar training courses in future. India has contributed to IAEA's efforts in drawing up an Action Plan on Nuclear Security and is supportive of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources. India actively contributed to the International Conference on the Safety of Transport of Radioactive Material held in July 2003 and welcomed the adoption by the IAEA of the 'Action Plan on the Safety of Transport of Radioactive Material'.

19. India has been an active partner in IAEA programmes related to safety and security of radioactive sources. India has conducted an IAEA regional workshop on Regulatory Authority Information System (RAIS) that can be used for creating and maintaining the national registry of radiation sources. India has also conducted a regional workshop on Development of National Strategies for improving control over radioactive sources, including orphaned sources. India has offered to conduct such courses on a regular basis for the IAEA and is also willing to serve as a Regional Training Center. India is also a State Party to the Convention on Physical Protection of Nuclear Materials (CPPNM) and has actively contributed to the process to introduce amendments to the Convention.

VI. Preventing proliferation of WMD means of delivery

20. India supports the efforts of the international community to prevent the proliferation of WMD means of delivery and related materials, equipment and

technologies. India wishes to see the norms against proliferation of missiles strengthened through transparent, multilateral agreements on the basis of equal and undiminished security, that also ensures that civilian space related applications are not adversely affected. India has actively participated in the work of the two UN Panels of Governmental Experts on Missiles.

VII. Security consciousness

21. Conduct of all employees of the Government of India dealing with officially classified documents, including in sensitive and high technology areas, is regulated under the Official Secrets Act, 1923 and the Central Civil Services (CCS) Conduct Rules, 1964. Contravention of the relevant provisions of the Official Secrets Act are punishable with imprisonment for a term which may extend to fourteen years. In addition, detailed instructions on a wide range of security issues such as information security, security of communications, material security, physical security, personnel security, vigilance, standard operating procedures, creating security awareness among the department's personnel, defining responsibilities of officials at various levels with regard to enforcement of security measures, etc. are issued by the relevant Government Departments/Ministries from time to time with a view to preventing any unauthorized access to material, information or know-how by direct or indirect means. These instructions and procedures are subject to periodic review.

VIII. Domestic Dual-Use Export Control Regime

22. India's commitment to non-proliferation is anchored in a conscious decision to prohibit or control export of materials, equipment and technologies of direct and indirect application to weapons of mass destruction and the means of their delivery. Conscious of its responsibilities arising from the possession of advanced technologies, civilian or strategic, India is committed to an effective and comprehensive system of export controls to deny unlawful access – whether to States or non-State actors. To this end, a rigorous domestic regime has been instituted through the creation of laws, inter-agency administrative mechanisms, and effective enforcement. These controls are subject to continuous review in consonance with changes in the technology environment and other requirements.

VIII.A. Brief History

23. India has always exercised control over the export of WMD-usable materials, equipment and technologies. In fact, the first control over exports of such materials was effected in 1947 in the context of control on export of Monazite and Thorium Nitrate. India's first Prime Minister Pandit Jawaharlal Nehru set out the basis for future controls over strategic exports by noting at the time that the export was "not merely a financial matter. It has international implications....It is desirable for the Government of India to prohibit the export of monazite and thorium nitrate from India (and) this would mean that any export would be in accordance with the explicit permission of the Government of India and subject to the conditions laid down".

24. By the early 1990s, India's scientific, technological and industrial capabilities had matured to a stage where India had become a user and producer of a range of dual-use materials, equipment and technologies. As a responsible member of the international community, in the early 1990s, India initiated the process to institutionalise a formal and structured system of export controls.

VIII.B Development of a formal system of control on strategic exports: A step-by-step approach

25. The first control list, described as "Special Materials, Equipment and Technology (SMET)" (Public Notice 68EXP(PN)/92-97), was notified in the Export Import Policy announced on March 31, 1995. This list was finalized by an inter-ministerial group constituted by the Government in 1993 to put in place a system of controls over strategic exports from India. Separately, but effective from the same fiducial date (i.e. April 1, 1995), the Department of Atomic Energy (DAE) issued gazette notifications, under the Atomic Energy Act, 1962, listing prescribed equipment and prescribed substances, that are subject to export licensing by the DAE.

26. Pursuant to India's signature to the Chemical Weapons Convention (CWC) in January 1993, a list of dual-use chemicals, the export of which is either prohibited or permitted only under license, was issued in 1993. Pursuant to the Environment Protection Act, 1986, a gazette notification was issued by the Government in 1989 on rules for the manufacture, use, import, export and storage of hazardous micro-organisms/genetically engineered organisms or cells.

27. A second inter-ministerial 'Small Group on Strategic Export Controls' was set up in 1999 to review the implementation of the existing system and make recommendations for further enhancing its effectiveness. Subsequently, through a notification effective April 1, 2000, the Director General of Foreign Trade specified a list of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), the export of which is either prohibited or permitted only under license and the conditions attached thereto. The grant of license is subject to submission of requisite documents, including end-use cum end-user certification.

VIII.C National Control List

28. The SCOMET List is currently notified in the Export Policy in Schedule 2 Appendix 3 of the Indian Tariff Classification (Harmonized System) {ITC(HS)} Classifications of Export and Import Items, 2004-2009. The list contains all dual-use items and technologies within 8 categories, in keeping with the Government of India requirements. These are as follows:

Category 0: Nuclear materials, facilities and related equipment

Category 1: Toxic chemical agents and other chemicals

Category 2: Micro-organisms and Toxins

Category 3: Special Materials, Materials Processing Equipment and Related Technologies

Category 4: Avionics and Navigation

Category 5: Aerospace materials, equipment, systems and related technologies

Category 6: Reserved

Category 7: Electronics, computers, and information technology including information security

VIII.D Legal basis

29. Detailed regulations and procedures are notified by the Government of India under the various Acts that provide the legal basis for exercising export controls. These include The Explosive Substances Act, 1908; The Narcotic Drugs and Psychotropic Substances Act, 1985; The Environment Protection Act, 1986; The Atomic Energy Act, 1962, No.33 of 1962; The Arms Act, 1959 and The Arms Rules, 1962; The CWC Act, 2000; The Customs Act, 1962; and The Foreign Trade (Development and Regulation) Act, 1992, No.22 of 1992 which last came into force on August 7, 1992, and covers items not regulated by any other Act. Other regulations and procedures are detailed in The Foreign Trade Policy, 2004-2009 and Volume 1 of the 'Handbook of Procedures' (1 September 2004-31 March 2009) issued by the Ministry of Commerce and Industry, Government of India.

VIII.E Administrative mechanisms

30. Administrative mechanisms are in place at the functional as well as the policy level for inter-ministerial consultations on export controls. A standing Inter-Ministerial Working Group (IMWG) meets routinely to take decisions regarding license applications. An inter-ministerial High Powered Committee on export controls, comprising senior officials, provides a policy level forum for discussions and decisions on various issues related to the Government of India system of export controls.

VIII.F Enforcement

31. Various agencies of the Government are empowered to enforce the provisions of the laws and the rules, regulations and orders issued thereunder, which form the legal and regulatory basis of India's system of dual-use export controls. Every exporter is expected to comply with the provisions of the Foreign Trade (Development and Regulation) Act, 1992, the Rules made and Orders issued thereunder, the provisions of the Foreign Trade Policy and the terms and conditions of any license granted to him as well as provisions of any other law for the time being in force.

32. Legislative provisions are in place under the relevant Acts for initiating quasi-judicial, departmental proceedings on the enforcement side, which may involve seizure/confiscation and imposition of penalties for controlled items exported or

attempted to be exported in violation of existing export control regulations and the suspension/cancellation of the right to engage in import-export activity as embodied in the Importer-Exporter Code Number.

33. Without prejudice to prosecution under any other Act for the time being in force, export control violations are also punishable with imprisonment for a term which may extend to three years or with fine or both under the Customs Act, 1962. This term may extend to seven years and with fine in case of subsequent violations. Export or attempt to export in violation of any of the conditions of the license granted is also punishable. The Foreign Trade (Development & Regulation) Act, 1992 also empowers the Government to conduct search and seizure under the relevant provisions of the Code of Criminal Procedure, 1973. Provisions are in place in The Customs Act, 1962 and the Foreign Trade (Development & Regulation) Act, 1992 to deal with entities aiding and abetting trade activities in contravention of existing rules and regulations. Provisions are also included in The Customs Act, 1962 for prosecuting Customs officials for conniving in fraudulent exports, including those effected in violation of SCOMET regulations.

VIII.G Encouraging compliance through Government-Industry Outreach

34. Government of India is fully conscious of the importance of partnership with the industry for the success of an effective export control system. Outreach meetings are routinely conducted by the relevant Departments of the Government to increase awareness among the exporter community. These may be region-wise or sector-specific and may include open house meets and personal interviews. Dissemination of information about existing rules and regulations and any changes therein is also done through electronic means.

IX. Preventing WMD proliferation

35. The framework of Indian laws, rules & regulations, and administrative measures elaborated above are the manifestation of India's commitment to prevent the proliferation of weapons of mass destruction, their means of delivery and related materials and reflects India's contribution to global non-proliferation efforts and the promotion of international peace and security. India believes that meeting new proliferation challenges requires fresh approaches for evolving a more cooperative and

consensual international security order that effectively addresses genuine proliferation concerns and differentiates between responsible States whose actions strengthen non-proliferation and those that weaken the realization of its objectives. While ensuring that States do not engage in WMD proliferation under the pretext of peaceful uses, this consensus must not hinder international cooperation in terms of transfers of materials, equipment and technologies for peaceful purposes and the developmental benefits that accrue from such exchanges.